

Message

From: Wu, Jennifer [Wu.Jennifer@epa.gov]
Sent: 3/7/2019 5:08:42 PM
To: Lidgard, Michael [Lidgard.Michael@epa.gov]; Weber, Courtney [Weber.Courtney@epa.gov]; Soscia, Mary Lou [Soscia.Marylou@epa.gov]; Byrne, Jennifer [Byrne.Jennifer@epa.gov]; MacIntyre, Mark [Macintyre.Mark@epa.gov]
Subject: RE: MEDIA INQUIRY: EPA AND 401 CERT REQUEST

Sounds good to me. I think this is general enough. Just FYI, that EPA does regulate temperature for cooling water in dams. It's in the draft Idaho GP and also Region 1's GP for dams, so it's not just an issue in the Columbia and Snake River dams. But generally, the focus of dam permits are on oil and grease discharges.

From: Lidgard, Michael
Sent: Wednesday, March 06, 2019 5:18 PM
To: Weber, Courtney <Weber.Courtney@epa.gov>; Soscia, Mary Lou <Soscia.Marylou@epa.gov>; Byrne, Jennifer <Byrne.Jennifer@epa.gov>; Wu, Jennifer <Wu.Jennifer@epa.gov>; MacIntyre, Mark <Macintyre.Mark@epa.gov>
Subject: RE: MEDIA INQUIRY: EPA AND 401 CERT REQUEST

I also concur with JB's response. high level, general response. Thanks all

From: Weber, Courtney
Sent: Wednesday, March 6, 2019 5:16 PM
To: Soscia, Mary Lou <Soscia.Marylou@epa.gov>; Byrne, Jennifer <Byrne.Jennifer@epa.gov>; Wu, Jennifer <Wu.Jennifer@epa.gov>; MacIntyre, Mark <Macintyre.Mark@epa.gov>
Cc: Lidgard, Michael <Lidgard.Michael@epa.gov>
Subject: RE: MEDIA INQUIRY: EPA AND 401 CERT REQUEST

Being general sounds fine to me. The legal issues are very nuanced and can be misinterpreted easily (e.g., the Seattle Times article about the permits regulating temperature).

From: Soscia, Mary Lou
Sent: Wednesday, March 06, 2019 5:08 PM
To: Byrne, Jennifer <Byrne.Jennifer@epa.gov>; Wu, Jennifer <Wu.Jennifer@epa.gov>; MacIntyre, Mark <Macintyre.Mark@epa.gov>; Weber, Courtney <Weber.Courtney@epa.gov>
Cc: Lidgard, Michael <Lidgard.Michael@epa.gov>
Subject: RE: MEDIA INQUIRY: EPA AND 401 CERT REQUEST

Yes on JB's response.....it is so very complicated.....the yellow highlight is the answer that I recommend.

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From: Byrne, Jennifer
Sent: Wednesday, March 06, 2019 5:00 PM
To: Wu, Jennifer <Wu.Jennifer@epa.gov>; Soscia, Mary Lou <Soscia.Marylou@epa.gov>; MacIntyre, Mark <Macintyre.Mark@epa.gov>; Weber, Courtney <Weber.Courtney@epa.gov>
Cc: Lidgard, Michael <Lidgard.Michael@epa.gov>
Subject: RE: MEDIA INQUIRY: EPA AND 401 CERT REQUEST

Do we have to answer? I feel like we are being asked to walk a tightrope just because a reporter asked a question. If we have to answer, we should focus very clearly on the question asked, which is: How does EPA address water temperature at the dams?

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

It is just too complicated for a simple one sentence answer.

Just my two cents.

JB

From: Wu, Jennifer

Sent: Wednesday, March 06, 2019 4:44 PM

To: Soscia, Mary Lou <Soscia.Marylou@epa.gov>; MacIntyre, Mark <Macintyre.Mark@epa.gov>; Byrne, Jennifer <Byrne.Jennifer@epa.gov>; Weber, Courtney <Weber.Courtney@epa.gov>

Cc: Lidgard, Michael <Lidgard.Michael@epa.gov>

Subject: RE: MEDIA INQUIRY: EPA AND 401 CERT REQUEST

I also defer to the attorneys and managers to weigh in on legal issues and policy implications. Mary Lou is right, and I'm afraid the dam agencies will also ask DC to stop our work on the permits. I think this is why we didn't want to say much in the first place on temperature. One other thought is to also strike out "including temperature" so it's more general:

"EPA can regulate any pollutant in NPDES permits, if we find there is reasonable potential for the discharges EPA is authorizing to violate water quality standards."

From: Soscia, Mary Lou

Sent: Wednesday, March 06, 2019 4:32 PM

To: MacIntyre, Mark <Macintyre.Mark@epa.gov>; Byrne, Jennifer <Byrne.Jennifer@epa.gov>; Weber, Courtney <Weber.Courtney@epa.gov>

Cc: Lidgard, Michael <Lidgard.Michael@epa.gov>; Wu, Jennifer <Wu.Jennifer@epa.gov>

Subject: Re: MEDIA INQUIRY: EPA AND 401 CERT REQUEST

Mark:

I think this is a problematic answer.

But I defer to the attorneys for what we can say.

If this gets printed, the Federal Dam agencies would run to DC immediately to begin discussions to stop any WLA actions for federal dams. They already have an open door and they would be very upset to see this in writing and I would predict there will be repercussions for R10.

But I defer to JB and Courtney for the legally defensible answer

From: MacIntyre, Mark
Sent: Wednesday, March 6, 2019 3:52 PM
To: Byrne, Jennifer; Weber, Courtney
Cc: Lidgard, Michael; Soscia, Mary Lou; Wu, Jennifer
Subject: MEDIA INQUIRY: EPA AND 401 CERT REQUEST

J/C: Would it pass legal/policy muster if I answered the reporters question with the slightly more succinct answer that Jenny Wu crafted:

“EPA can regulate any pollutant in NPDES permits, including temperature, if we find there is reasonable potential for the discharges EPA is authorizing to violate water quality standards.”

From: Michael OBryant <obryants@comcast.net>
Sent: Wednesday, March 6, 2019 10:56 AM
To: MacIntyre, Mark <Macintyre.Mark@epa.gov>
Subject: Re: EPA AND 401 CERT REQUEST

Hi Mark

I got a copy of the EPA letter. If you can, please let me know EPA's answer to the second question.

Best

Mike O'Bryant

Columbia Basin Bulletin

On March 4, 2019 at 11:06 AM Michael OBryant <obryants@comcast.net> wrote:

Hi Mark

Would you mind emailing back EPA's Feb. 15 letter to Ecology regarding these permits.
Will that letter better explain why EPA withdrew its draft permits?

Also, it's my understanding that EPA cannot by regulations include water temperature in these permits. How does EPA address water temperature at the dams?

Best

Mike O'Bryant

Columbia Basin Bulletin

On February 14, 2019 at 1:23 PM "MacIntyre, Mark"
<MacIntyre.Mark@epa.gov> wrote:

Mike: Thanks for your inquiry, which Bill Dunbar kindly forwarded to me regarding our request to the Department of Ecology.

We have not yet responded to Ecology's letter from Heather Bartlett.

Currently, this is what we are saying publicly on the matter(Please attribute to "EPA"):

"EPA has determined that the preliminary draft permits for which we had requested water quality certification need additional internal review. Therefore, we have withdrawn our requests for water quality certification at this time. We fully intend to reinstate our requests for water quality certification after we have completed our internal review and updated the preliminary draft permits, as appropriate."

Thanks for the opportunity.

Mark

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